

August 9, 2022

Sage Park
Regional Director
SEPA Responsible Official
Washington Department of Ecology
Central Regional Office
1250 W. Alder Street
Union Gap, WA 98903-0009

RE: Comments on the State Environmental Policy Act Draft Environmental Impact Statement for the Proposed Goldendale Energy Storage Project

Dear Ms. Park,

Thank you for the opportunity to submit comments regarding the proposed Goldendale Energy Storage Project¹ (the Project) June 6, 2022 Draft Environmental Impact Statement (DEIS) prepared by the Washington State Department of Ecology (Ecology). The comments of FFP Project 101, LLC (Applicant) are provided as Attachment A. The Applicant submitted a Clean Water Act Section 401 Water Quality Certification (WQC; Order No. 20153) request to Ecology in June 2020. The submittal included a draft State Environmental Policy Act (SEPA) checklist and associated resource reports and studies to inform Project review under the SEPA and to inform analysis of the National Environmental Policy Act (NEPA) to be prepared by the Federal Energy Regulatory Commission (FERC). Both documents are required for federal and state permitting, and a FERC license. A final SEPA checklist was submitted to Ecology in December 2020, and it is this document, along with the above-referenced resource reports and studies, that precipitated SEPA review. As you are aware, a new request for WQC and additional/revised Project plans and studies were submitted to Ecology on May 23, 2022. The comments provided in Attachment A and additional information about the proposed Project are included to reflect the Applicant's knowledge of the Project, findings of subsequent research and field investigations, and additional/revised plans and studies prepared after the December 2020 SEPA submittal.

In addition to the comments and information provided below and attached, the Applicant is respectfully requesting that Ecology prepare a socioeconomics section for the Final Environmental Impact Statement (FEIS). We recognize that this is an optional element to be studied in an EIS,² but socioeconomics is both an important and a common topic to be included in EIS's throughout the state³ by counties, Ecology, and the state Energy Facilities Site

¹ Federal Energy Regulatory Commission (FERC) No. 14861.

² Washington Administrative Code (WAC) 197-11-440(8).

³ *Wind Power Project Final Environmental Impact Statement*, EFSEC February 2007, at Section 3.7.

Evaluation Council (EFSEC).⁴ The climate crisis we are currently facing is existential. The State of Washington is addressing climate change through a variety of measures including, but not limited to, the Clean Energy Transition Act (CETA)⁵ and the Climate Commitment Act.⁶ These legislative directives are driving extraordinary change in how electricity is generated and transmitted in the state. The state has, over the years, developed an abundant number of studies regarding the effects of climate change and responses, including the effects on life, lifestyles, land use patterns, and myriad other aspects of coping with a warming planet. We strongly believe that the socioeconomic aspects of developing a 1,200 megawatt (MW) clean and renewable source of electricity generation are important to understand, and this EIS process provides a valuable pathway to examining them. We understand the potential effects that this could have on the budget and timing for publication of the FEIS and are happy to discuss them further with you before making a decision on this request.

On behalf of the Applicant, thank you for your consideration of these materials as you finalize the EIS. Should you have questions, please do not hesitate to contact me.

Sincerely,



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⁴ See, e.g., *Lower Snake River Wind Energy Project Final Environmental Impact Statement*, Garfield County October 2009, at Section 2.2.15; *Millennium Bulk Terminals Longview Final Environmental Impact Statement*, Cowlitz County and Washington Department of Ecology April 2017, at Section 3.2, Social and Community Resources, Page 3.2-1 (“These resources include population characteristics, economic activity, and utility services.”); *Kittitas Valley Wind Power Project Final Environmental Impact Statement*, EFSEC February 2007, at Section 3.7.

⁵ Revised Code of Washington (RCW) 19.405.

⁶ RCW 70A.65.

Attachment A – Applicant Comments on Ecology DEIS

Overarching Comments

Purpose

An EIS is not a permit to be either granted or denied. The purpose of an EIS is to inform decision-makers, when taking action, about the probable significant adverse environmental impacts of a proposed action and to provide recommended mitigation measures where feasible, including those that can eliminate or reduce impacts to a level that are less than significant. It is Ecology's document and it is Ecology's SEPA Responsible Official who has the responsibility to determine whether the analysis, inclusive of the mitigation measures recommended in the EIS, is adequate to satisfy the objectives of SEPA as written and as confirmed by case law. That duty cannot be delegated to any third-party stakeholder to the Project. At various points below, we address the existence of mitigation measures that the Applicant has either built into the Project's siting and design, or suggested as potential conditions of subsequent permits to reduce the level of the Project's impacts. We strongly encourage Ecology to consider mitigation measures that are built into the Project's siting and design to support a conclusion that, when coupled with mitigation measures identified in the EIS, the Project will not have significant impacts on the built and natural environment inclusive of, but not limited to, wetlands, cultural resources, and fish and wildlife.

Alternatives

For a private project at a specific site, the EIS is required to examine only the Proposed Action, the No Action Alternative, and other reasonable alternatives *that will allow the applicant to achieve the proposal's objective on the same site.*⁷ Here, the Applicant seeks to build a facility capable of generating up to 1,200 MW of CETA-compliant clean electricity via a closed-loop pumped storage hydroelectric facility that avoids any river or stream impoundments, and which provides balancing services to the electric grid and flexible renewable energy capacity to utilities serving customers in the Pacific Northwest, California, and the Western Interconnection.

While other DEIS comments submitted to Ecology to date urge the agency to consider 'an appropriate range' of alternatives, there are no other alternatives that can reasonably accomplish the Project's purpose, need, and objectives on this site. As is stated in the DEIS, the objectives of the Proposed Action include reusing an existing industrial site. A portion of the Project would be constructed at a brownfield site that was previously used for industrial activities. The Applicant will participate in part of its cleanup. Repurposing a portion of a former industrial development and committing to support cleanup activities is a responsible means of funding a cleanup and minimizing the Project's impacts by limiting them to an already affected area.

An additional objective of the Project is to make use of an existing water right. Using an existing water right owned by Klickitat Public Utility District (KPUD) allows the Project to be built without drawing additional water from the Columbia River above and beyond those water rights already in place. The KPUD water right is a long-existing entitlement that has been exercised for many years. As a result, the water intake features on the Columbia River are already in place.

⁷ See WAC 197-1-440(5)(d).

The objective of using an existing water right and intake structure is a built-in feature of the Project designed to avoid impacts on water supply and the fisheries dependent thereon. There are no other existing water rights with existing intake features available to this site that would support the provision of the water required to generate up to 1,200 MW of clean and renewable electricity.

Last, the Project would be located near existing Bonneville Power Administration (BPA) transmission lines, the existing John Day Substation, and nearby windfarms. This Project objective—proximity to the BPA transmission lines and the John Day Substation—allows the Applicant to mitigate land use and visual impacts through Project siting and design, as the Project is proposed for siting in an area already containing other energy facilities including transmission, substations, and wind energy generation.

These express objectives support development of the Project at this site. There is no other alternative at this site that can meet all of these objectives while generating 1,200 MW of clean renewable electricity using pumped storage hydro. It is not only reasonable but proper that the DEIS examined the Proposed Action and the No Action Alternative on this site, which is the only site on which alternatives must be examined, particularly in light of the Project objectives established for this proposal, which themselves facilitate built-in siting and design measures that mitigate the Project's impacts.

Main DEIS Document – Section 4.2, Water Resources

Page 71, Section 4.2.2.1: Ecology should provide the technical basis for the following statement regarding construction dewatering: “The dewatering would also create a temporary reduction in the quantity of groundwater reaching its existing discharge location that, depending on location of dewatering relative to the Unconsolidated Aquifer (UA) flow system, is either springs or Lake Celilo surface water,” or remove this text. Groundwater modeling presented within the Dewatering Plan submitted as part of the Project's Section 401 WQC Application indicates minimal potential for leakage from the lower reservoir to impact groundwater flow.

Page 77, Section 4.2.2.2: Ecology should provide the technical basis for the statement that Project operation would result in “anticipated changes to groundwater flow direction,” or remove this text.

Page 80, Section 4.2.2.2: Ecology states “The migration of the assumed leakage return flow is expected to occur via groundwater, although the specific pathway(s) for that migration is not currently defined. Given an expected gradual degradation in water quality within the pumped storage system, this leakage return flow has the potential to impact groundwater quality in the southern portion of the study area as well as the Columbia River, which receives groundwater discharges from that area.” Ecology should provide the technical basis for “assumed leakage of return flow” and potential for leakage to impact the Columbia River, or remove these statements. The Project tunnels and lower reservoir will be designed to minimize potential for groundwater leakage as detailed in the Project's 401 WQC Application. The Applicant has included measures to monitor and adaptively manage water quality within the Project reservoirs in the Water Quality Monitoring Plan provided with the Project's Section 401 WQC Application.

Main DEIS Document – Section 4.9, Cultural and Tribal Resources

Cultural resources include “the collective rights and access [by Native Americans] to traditional areas and times for gathering resources associated with an Indian Tribe’s sovereignty since time immemorial. It includes inherent rights or formal treaty rights associated with usual and accustomed territories. In addition, Tribal resources includes areas important to traditional cultural practices and the natural and cultural resources associated with those practices including plants, wildlife, or fish used for commercial, subsistence, and ceremonial purposes.”⁸

The DEIS was informed by the results of archaeological and ethnographic studies in the study area and archaeological sites, and the Traditional Cultural Properties (TCP) have been inventoried. More importantly, Ecology has engaged directly, and continues to engage, in government-to-government consultation with the affected Tribes to enhance its knowledge and understanding of the potential effects of the Project on affected Tribes.⁹ Ecology is participating in the Project’s FERC Licensing process and attended the November 10, 2021, meeting FERC held with the Yakama Nation to discuss the Commission’s role and obligations to consult pursuant to Section 106 of the National Historic Preservation Act for the proposed Goldendale Energy Storage Project.

Because of the Tribes’ unique, deep, and strong connection to, and reliance on, cultural and natural resources, they have what is known as Tribal Ecological Knowledge of ecosystems. Given the interwoven nature of ecosystems, in addition to DEIS Section 4.9, Cultural Resources, other elements of the environment have been examined in the DEIS for impacts on them, including Section 4.8, Aesthetics/Visual Quality; the Aquatic Species and Habitats Resource Analysis Report (Appendix F of the DEIS; Anchor QEA 2022a) and Section 4.6 of the DEIS; and the Terrestrial Species and Habitats Resource Analysis Report (Appendix G of the DEIS; Anchor QEA 2022b) and Section 4.7 of the DEIS.

The Applicant has also repeatedly engaged with Tribes affected by the Project in an effort to better understand the Project’s potential impacts on cultural resources as well as the built and natural environment more broadly. In 2017, representatives of the Applicant, Rye Development, met with the full Yakama Nation Tribal Council to provide an overview of the Project, answer questions, and listen to their concerns. Per Yakama Nation’s request, the Applicant enlisted the Tribe’s cultural resource staff and botanist to conduct a TCP study for input and deeper understanding of the potential impacts of the Project. Early on, Rye made significant design modifications to lessen the impacts on the landscape and visual impacts. We believe that the materiality of the modifications should be recognized in the DEIS as mitigation built into the facility design, as the changes include moving the location of the upper reservoir and tunneling or burying the majority of the Project features that connect the two ponds.

Rye also enlisted staff from the Nez Perce Tribe and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) to conduct TCP studies. The results of these efforts include ethnographic studies completed by the Nez Perce Tribe, the CTUIR, and the Confederated Tribes and Bands of the Yakama Indian Nation (Yakama Nation), and a Project-specific Historic Properties Management Plan (HPMP). Throughout 2021, Rye sent quarterly updates to all three

⁸ DEIS at Page 157.

⁹ DEIS at Page 157.

affected Tribes, requesting the opportunity to meet with Tribal Councils to provide updates and discuss the Project. Due to the disproportionate health impacts related to COVID-19¹⁰ on the Yakama Nation, most direct communication with Tribal leadership ceased. Then, in October 2021, Rye was invited to attend a full Yakama Nation Tribal Council meeting and was assigned two points of contact with the Tribe for the Goldendale Project.

All of the above has informed a variety of measures—some built into design and others proposed for inclusion in the EIS and subsequent permits—designed specifically to avoid, protect, and/or mitigate impacts on cultural and environmental resources that the Project could have on affected Tribes. For example, Attachment B is a list of 15 specific measures proposed by the Applicant tailored to address impacts of significance to the Nez Perce Tribe, CTUIR, and Yakama Nation. Note that any identifying information that would disclose the specific nature or location of such measures has been redacted to protect confidentiality. These measures address both cultural and ecosystem impacts of the type identified in the DEIS.

In addition to these, the Applicant will be obligated by FERC, through its 50-year facility license, to negotiate an Historic Property Management Plan with affected Tribes. A Programmatic Agreement will also be prepared under Section 106 of the National Historic Preservation Act. Compliance with these and other permitting agencies' requirements is a standard condition in permits issued by Washington agencies. The Applicant expects that compliance with these FERC conditions will be recommended in Ecology's FEIS, which enables an agency to determine that a Project's impacts can be adequately minimized.

Considering the magnitude of the efforts and measures described above, Rye is troubled by the language in the DEIS at Page 157 that states "Some mitigation options for Tribal and cultural resources have been proposed by the Applicant. However, to date, there is no information available about mitigation proposed by or supported by the Tribes that would reduce the level of impact to less than significant." Reading this finding, one would incorrectly assume that the Applicant has made no effort to engage with Tribal stakeholders when, in fact, Rye has and will continue to earnestly engage with Tribes because we share an interest in the environment in which the Project would be developed. With all due respect to Tribal stakeholders, however, there is a difference between a lead agency recognizing unique vulnerabilities of Tribes and discounting the voluminous information in its SEPA record, or failing to conduct its own independent analysis of any mitigation measure for which a Tribe has not put forth or indicated support, or even opposes. Washington law does not allow a lead agency to decline to independently consider mitigation measures built into Project design or put forth by an Applicant simply because another stakeholder refuses to advance, opine on, or opposes them. This is true regardless of the element of the environment involved. Likewise, a lead agency may not draw conclusions that impacts are unmitigable based merely on a stakeholder's silence regarding such mitigation. Because the EIS is the document of Ecology and not the Applicant or any other stakeholder, it is Ecology's sole duty to determine the adequacy of the EIS. Ecology must make the final determination as to the potential for mitigation measures to reduce impacts. This remains true even if comments regarding mitigation are ultimately provided by the Tribes before

¹⁰ Coronavirus disease 2019.

the close of the comment period. SEPA contemplates lead agencies making determinative findings on a record-informed, but objective basis.

The Applicant urges Ecology and its EIS consultant to examine, consider, and discuss these measures with the Nez Perce Tribe, CTUIR, and Yakama Nation as part of the agency's evaluation of how impacts can be minimized prior to finalizing the EIS. Rye also expressly encourages Ecology and its EIS consultant to review the body of Tribal-related additional information that the Applicant has submitted to Ecology in the course of its 401 WQC and SEPA review of the Project.¹¹ Doing so should inform and ultimately enable the FEIS to conclude that as mitigated and conditioned as proposed, the Project will not result in any significant adverse impacts. The Applicant is happy to continue discussing additional mitigation measures that can ameliorate the effects of the Project on the environment and stakeholders, including Native American Tribes.

The Applicant notes that in various places, the DEIS affirmatively states that the Project itself would restrict access to areas used by the Tribe. This statement is not properly informed or correct. The Project parcel is neither public nor open and unclaimed as that term is defined by law. Nevertheless, in the entire time that the Applicant has been leasing the Project site, it has not rejected any of the many requests it has received for access to the Project site. None of the requests received has been from a Tribe. Additionally, the Project site itself is surrounded by parcels in third-party ownership. Access rights across those parcels must exist in order to reach the Project site. The Applicant, as lessee of the Project site, cannot control, modify, create, or in any way impact Tribal access rights across those other parcels of land, which would be necessary in all cases to reach the Project site. The statement that the Project will restrict access is unsupported by the record. The Applicant requests that Ecology provide more information and figures in the EIS that indicate past, current, and future intended use and access by the Tribe. Thereafter, Applicant respectfully requests that Ecology revisit the mitigation measures proposed by the Applicant and conclude that "to alleviate potential impacts to access to the Project site for historically conducted activities, a mitigation measure can be to require the Applicant to consider allowing Tribal members to access select areas near the Project site, such as at root digging areas or areas containing other traditionally gathered resources."

Page 157, *Key Findings of the Tribal and Cultural Resources Analysis* pop-out: "Some mitigation options for Tribal and cultural resources have been proposed by the Applicant. However, to date, there is no information available about mitigation proposed by or supported by the Tribes that would reduce the level of impact to less than significant." Ecology should note in the FEIS that the Tribes chose not to participate in discussions or collaborate with Project representatives.

Page 159: Ecology states that "Both MPDs^[12] are NRHP^[13]-eligible." This is partially incorrect, as MPDs are not resources and thus cannot be NRHP-eligible. An MPD is a fillable form used to nominate groups of significant related properties. An MPD is not itself a nomination (i.e., it is

¹¹ If the resource studies and materials that were provided to Ecology in association with the Applicant's Clean Water Section 401 WQC submittal are not included as part of the SEPA review record, Applicant expressly requests that they become part of the record considered and upon which the FEIS is based.

¹² multiple property documentation

¹³ National Register of Historic Places

not a resource in and of itself) but is rather a context for evaluating and nominating properties with similar characteristics. Ecology should restate the characterization in its FEIS for accuracy.

Page 161: Ecology states that “The Washington State Department of Archaeology and Historic Preservation has estimated that 100% of 15 sites could be disturbed (DAHP 2022b).” (Emphasis supplied). However, the Applicant’s findings—based on site-specific investigations that have also been submitted to Ecology for inclusion and analysis in the SEPA review process—identify only five sites that will be disturbed. The discrepancy is likely due to Department of Archaeology and Historic Preservation (DAHP) not considering the fact that various sites within the Project boundary have been combined into single sites through Shellenberger’s and the Applicant’s investigations as reported in Table 2-1 in the HPMP (FFP 101, LLC 2022). Also as described in the HPMP, there are indeed more than the five noted archaeological resources within the Project boundary, but these will be avoided by the Project. This information provides important context that should be included in the EIS.

Main DEIS Document – Section 4.10, Environmental Health, Cleanup Action for Contaminant Impacts from the Adjacent Smelter

General: There are multiple references in the DEIS to a “separate process” regarding investigating contamination on the site and developing cleanup actions. Ecology should clarify what the processes are for the cleanup action early in the document (e.g., site-wide cleanup action for the Columbia Gorge Aluminum Smelter by the Potentially Liable Persons [Smelter PLPs, i.e., National Smelter Corporation (NSC) and Lockheed Martin] or Goldendale Energy Storage Project area cleanup action and Prospective Purchasers Consent Decree [PPCD] for those impacts within the Project area). The Applicant notes that the DEIS refers to these processes accurately in some locations (e.g., Section 4.10, Pages 166–167).

Page 170, Section 4.10: Following description of the Prospective Purchaser Agreement, Ecology details “the Applicant exercising an option to purchase the land required to complete the proposed Project.” The Applicant is going to lease the land required to complete the proposed Project.

Page 170, Section 4.10: Ecology details the “Applicant estimates that 145,550 in-place cubic yards of materials would need to be removed.” The Applicant notes that this is an estimate based on the draft Remedial Investigation / Feasibility Study and represents one potential excavation option. The volume of material to be excavated may change (i.e., increase or decrease) depending on the disproportionate cost analysis; in the FEIS, Ecology should remove the estimate or indicate that this estimate may change.

Page 170, Section 4.10.1: Ecology details that the analysis of environmental substances within the smelter cleanup site by the Applicant “included no additional data collection or modeling.” The Applicant notes that groundwater modeling was completed to estimate the dewatering effect on groundwater hydrology and plume migration as presented in the Draft Dewatering Plan submitted with the Section 401 WQC Application. Ecology should clarify that no additional data was collected to assess contamination due to the availability and sufficiency of historical data associated with the West Surface Impoundment (WSI) closure and post-closure monitoring to assess cleanup actions.

Page 172, Section 4.10.2.1: In discussion of construction stormwater, Ecology states “If Ecology defines an allowable discharge for the contaminants of concern associated with the WSI cleanup action prior to their issuance of a Section 401 water quality certification decision for the proposed Project, Ecology may choose to address the handling of contaminated stormwater and material in the Section 401 water quality certification instead of a site-specific Administrative Order.” To inform the FEIS, the Applicant expects to address construction stormwater via the 1200-C Permit.

Page 172, Section 4.10.2.1: Ecology details that “The Surface and Groundwater Hydrology Resource Analysis Report” (Appendix B of the DEIS) proposes preparation of a Construction Water Resource Monitoring and Response Plan as a mitigation measure. This Plan would be implemented during construction and would provide an integrated program to monitor water quantity (hydrology) and water quality for groundwater and surface water. It would also define metrics for determining the presence and degree of impact. The proposed Plan would likely be prepared independent of the proposed WSI removal action under the Model Toxics Control Act (MTCA), but it may overlap with MTCA monitoring requirements (e.g., share monitoring locations) to achieve a comprehensive and efficient program overall.” The Applicant does not anticipate a separate Construction Water Resource Monitoring and Response Plan will be required as a mitigation measure for groundwater or surface water due to the minimal impacts to these systems expected according to groundwater modeling and understanding of surface water features. The Applicant will address water quality associated with Project construction through the Dewatering Plan, water quality during operation through a Water Quality Monitoring Plan, and soil and groundwater cleanup actions under MTCA; the Applicant has submitted a draft Mitigation Plan to address potential impacts on wetlands or ephemeral streams adjacent or within the Project area.

Main DEIS Document – Section 4.14, Environmental Justice

A newly added requirement to SEPA environmental review, the environmental justice (EJ) element of the environment, is expressly examined in the DEIS.¹⁴ Traditionally a federal requirement, through the addition of Chapter 70A.02 to the Revised Code of Washington (RCW), the Washington Legislature has made this a focus for agency consideration of actions on matters both public and private. There is no federal formula established for analyzing EJ, nor is there any binding guidance associated with it. As reflected in RCW 70A.02.005(2), people of color and low-income people are, and continue to be, disproportionately exposed to environmental harms in their communities, leading to a higher risk of adverse health outcomes for such communities. The focus on EJ is to reduce those environmental and health disparities.¹⁵ Additionally, Chapter 70A.02 is intended to “reduce exposure to environmental hazards within Indian country, as defined in 18 U.S.C. Sec. 1151, due to off-reservation activities within the state, and to improve state practices to reduce contamination of traditional foods wherever they occur.”

¹⁴ DEIS at Page ii; see also DEIS Section 14, Environmental Justice, and Figure 4.14-1, Environmental Justice Study Area Map.

¹⁵ RCW 70A.02.005(1).

The EJ study area used in the DEIS includes people living within 2 miles of the Project footprint.¹⁶ Nobody lives in or immediately adjacent to the study area, as the Project is proposed for siting in an area that is rural, isolated, and sparsely developed; there is only one house in the vicinity, located 0.4 mile away from the lower reservoir. The study area was not identified as an overburdened community based on review of the Environmental Health Disparities layer of the Washington Tracking Network (WTN 2022).¹⁷ Consequently, there are no overburdened communities (people of color or low income) to be impacted by the Project.

Moreover, the Project is not the type of development that would lead to exposure to the environmental hazard that Chapter 70A.02 RCW is designed to address. The same is true for the Project's potential to expose Native Americans to environmental hazards due to off-reservation activities. Unlike the traditional types of environmental hazards such as air emissions from fossil-fuel combustion at generation plants or contaminated drinking water from coal ash impoundments, the proposed Project has neither of these features. Consequently, this Project presents neither environmental hazards nor vulnerable communities that require protection. While there is currently no electricity generating facility with harmful emission within 2 miles that the proposed Project would displace, the phenomena of climate change and adverse health impacts from fossil-fuel emissions is global, and the impacts are also universal. If anything, this Project presents the real potential for a reduction in harmful air emissions when it displaces other fossil-fuel-based electric generation.

The DEIS is informed by analysis contained in the DEIS Appendix J, Environmental Justice Report, showing the work that the Lead Agency did to draw its conclusions. The analysis provides the citations to the authorities and methodologies that were utilized for the DEIS, and in the absence of any binding guidance and adopted regulations, the approach taken by Ecology is reasonable and supported by ample evidence. We concur with the analysis and conclusion in Chapter 4.14 of the DEIS that the proposed Project would have no significant and unavoidable adverse impacts to the extent related to EJ requiring mitigation because there are no communities of color or low income present to be impacted. Furthermore, the Project is not the type of facility that presents the risk of food supply contamination in the area. We agree with the DEIS conclusion that there are no significant adverse impacts on EJ as a result of the Project.

The Applicant does respectfully request, however, that the Lead Agency revise and limit its conclusions in the EJ section of the DEIS to only EJ impacts. Conclusions regarding any impacts from the proposed Project related to cultural resources properly belong in DEIS Section 4.9, Cultural Resources. Duplicating conclusions from one section of the document to a second section of the document inappropriately and unnecessarily amplifies the Project's potential impacts and dilutes the appropriate EJ focus on the impacts on food supplies and disproportional health risks to vulnerable communities.

Appendix B – Surface and Groundwater Hydrology Resource Analysis Report

Page 11, Section 3.2.2, Table 3: A new wetland delineation of the lower reservoir area needs to be performed since Wetlands A, B, C, and D are artifacts from water loss at the former smelter. The increased recharge in the area from historical artificial ponds that were used during smelter

¹⁶ DEIS at Page 205.

¹⁷ DEIS at Page 205.

operations are the reason the wetlands are there. As presented in the 401 WQC Application, since water flow to the smelter was shut off, aerial photographs show the wetlands migrating and disappearing over time. Visits to the site also concluded that the wetlands no longer exist. Most of the identified wetlands have fully dried up and the rest will likely also disappear since the artificial ponds no longer exist. Since these wetlands are naturally disappearing, they should not be included as surface waterbodies in the FEIS since they will not be affected by the Project.

Page 30, Section 3.3.1.1.2: Ecology states that, “The Applicant has proposed to include hydrologic/groundwater level monitoring as a component of a broader water quality monitoring plan, prepared in coordination with Ecology during the permitting process. Any such program would need to include pre-construction baseline monitoring to have a basis to assess changes. With appropriate water management (e.g., infiltration of the extracted and treated water to minimize loss of the groundwater resource), control measures, and monitoring programs in place and as required by permits, the temporary construction-related alteration to groundwater flow patterns, and potential downgradient effects at corresponding groundwater discharge locations, would not result in a significant adverse impact.” The Applicant agrees with this, provided the reference is to monitoring already proposed in the Water Quality Monitoring Plan or Dewatering Plan that were submitted to Ecology as part of the Project’s Section 401 WQC Application on May 20, 2022.

Pages 37, Section 3.3.2.1.1: Ecology states “As described in Section 3.3.1.1.2, the Applicant would include hydrologic/groundwater level monitoring as a component of a broader Water Quality Monitoring and Response Plan to document hydrologic changes to surface waterbodies within and surrounding the proposed project footprint. This plan would be prepared in coordination with Ecology during the permitting process. With appropriate control measures and monitoring programs in place, including measurement of the project’s operating water balance with quantification of precipitation capture and leakage losses, the capture of precipitation by the upper and lower reservoirs would not result in a significant adverse impact. Should the project’s actual operating water balance indicate that the leakage is less than the estimated 5 AFY^[18] of surface water loss to the Swale Creek watershed, or 3 AFY of loss to the Columbia Tributaries watershed, the Applicant will be required to propose alternative mitigation.” The Applicant will incorporate hydrologic monitoring into the Dewatering Plan and Water Quality Monitoring Plans that were submitted as part of the Project’s Section 401 WQC Application.

Page 44, Section 3.3.4, Construction Water Resource Monitoring and Response Plan, and Operations Water Resource Monitoring and Response Plan: Ecology proposed water resources mitigation measures that would be included as conditions in the reservoir permit and described in these Monitoring and Resource Plans. Ecology requests an integrated program to monitor both water quantity and water quality of groundwater, surface water, and wetlands. The May 2019 and July 2021 field delineation of the waters and wetlands showed changes in the wetlands, which included significantly decreased wetlands and areas where wetlands no longer occur as compared to the those identified in the site-wide Remedial Investigation by Tetra Tech dated November 30, 2021. As identified in the 401 WQC application, aerial photos predating the development and construction of the former smelter show wetlands A, B, C, or D did not exist

¹⁸ acre-feet per year

prior to the smelter. Once the smelter was constructed, operating water loss from the plant increased recharge to groundwater in the area. This can be seen in aerial photos as wetlands begin to appear, grow, and migrate as the introduced water moved through the system. When the smelter was razed and the increased recharge to the area terminated, the aerial photographs show the wetlands decreasing in size and finally dissipating. The change in wetlands caused by the reduction of recharge from the smelter is further supported by the overall downward trend of groundwater elevations seen in the monitoring wells around the lower reservoir. Furthermore, with a decrease in groundwater elevation, the amount of overall pumping for dewatering and the corresponding affected areas will diminish. Since the wetlands in the area and the elevated groundwater are artifacts of the water loss from the smelter, the former wetlands and streams do not require monitoring and will not require mitigation.

Appendix C – Wetlands and Regulated Waters Resource Analysis Report

Wetlands

Pages 11-16, Section 3.2.2.1: Wetlands A, B, C, D, and H: While the Applicant appreciates the full range of information Ecology has included in the analysis, the Applicant disagrees with the inclusion of the areas identified as Wetlands A, B, C, D, and H in PGG's 2013 Septic System, Wetlands, Upper Fluoride Area, and Soil Background Investigation Report. These areas were likely misidentified or the hydrology has changed over time and these locations no longer support wetlands. The 2013 report does not indicate that a delineation was performed. The study investigated soil contamination and provided detailed information about the location and type of contaminants, but it only included a cursory mention of wetlands: no delineation methodology was presented; it did not include any descriptions or photographs of the wetlands; and no data sheets were included. Furthermore, there is no indication that a jurisdictional determination was applied for or made.

Pages 17-19, Section 3.2.3.1: These areas identified as wetlands occur in and adjacent to the old aluminum smelter site where soil and hydrology conditions have been highly disturbed over time, as described above in the comment on Appendix B, Surface and Groundwater Hydrology Resource Analysis Report, Page 11, Section 3.2.2, Table 3.

No other information gathered or studies performed to support Project reporting and analysis indicate that these areas currently support wetland conditions. National Wetland Inventory data does not indicate the presence of Wetlands A, B, C, or H, and only a small portion (1.43 acres) of the 17 acres identified as Wetland D is mapped as a wetland.

Field investigations indicate that these wetlands are not present:

- 2015: Applicant performed a reconnaissance-level site visit to prepare for Final License Application (FLA) studies that included a tour around the areas identified as Wetlands A, B, C, D, and H, and included general notes on vegetation. Separately, ERM performed a habitat typing in the same year.
- 2019: Applicant performed a wetland delineation in the Project boundary. Although the smelter site was not the focus of the study, no wetlands were identified at a reconnaissance level while the field crew accessed Project areas. Botanical surveys were also conducted in 2019.

- 2021: Applicant performed the Environmental Protection Agency’s Streamflow Duration Assessment Method (SDAM) on S7 and S8.
- 2022: Applicant performed a delineation of these areas at the request of Ecology and found no wetlands present. None of the dominant vegetation consisted of wetland obligate species and none of the soil samples at delineation locations indicated hydric soils. Soils were not examined at Wetland A due to the presence of unknown cultural resources mapped in and overlapping the footprint of the presumed wetland.

Although the Applicant’s 2022 wetland delineation was performed in consultation with Ecology, the reporting was not completed in time to include in the DEIS. The Applicant requests that Ecology include the 2022 delineation results in the FEIS.

Appendix G – Terrestrial Species and Habitats Resource Analysis Report

Pages S-1, 29, and 31: The report suggests that the Project could permanently reduce the density of small prey species in the study area (Pages S-1 and 31), but conflictingly also says small prey species could be attracted to the reservoirs (Page 29). The Applicant believes that the proposed mitigation measures (e.g., deterrents, fencing, vegetation management around reservoirs) will reduce the potential for small prey species to be attracted to the reservoirs (Final License Application Section 3.2.3.2, Appendix D, Wildlife Management Plan Section 2.3.3.). Please clarify in the FEIS.

Page 4, Figure 1a, Terrestrial Species and Habitats Study Area and Priority and Rare Plant Habitats in the Southern Portion of the Study Area: The wetland polygons displayed on this map are inaccurate per the Applicant’s 2022 wetland delineation field findings and should be updated in Ecology’s FEIS.

Pages 10, 15, and 23: Ecology indicates that several plant species may have been missed during the Applicant’s 2019 botanical survey because of the survey’s timing (e.g., California broomrape, Nuttall’s quillwort, and smooth desert parsley). The Applicant has proposed to perform pre-construction surveys, including a protocol-level full floristic survey with the intent of documenting all species present in the study area. The Washington Department of Natural Resources’ *Guidelines for Conducting Rare Plant Surveys* (2020), or similar Ecology-recommended protocol, will be followed to ensure the timing of the surveys captures bloom times.

Page 21, Section 3.2.3, Western Gray Squirrel, and Attachment 2, Table 2-3 Wildlife Species: Ecology’s FEIS should be updated to indicate that western gray squirrels are very unlikely to occur within the study area, as their required habitat types are not present. The Priority Habitats and Species (PHS) mapped for western gray squirrel in this area and conclusions regarding potential permanent impacts on the western gray squirrel throughout the document should be updated to reflect this. “There are only three remaining populations of the western gray squirrel in Washington, one of which occupies oak woodlands and conifer forests in Klickitat and Yakima counties, including similar habitat types within the Study Area” (WDFW 2021f). No oak woodlands have been documented within the study area. Open to moderately dense stands of conifers (i.e., Ponderosa pine and western juniper) are present (2019 Botanical Report Page 11), but not forests. “Stands of Ponderosa pine and western juniper were observed within mapped PHS boundaries in the upper and lower reservoir areas and the middle escarpment, but no

Oregon white oak was observed within the Study Area” (2019 Botanical Report Page 16). The quoted DEIS sentence is misleading because it says similar habitat types to oak woodlands and conifer forests occur in the study area. The same paragraph goes on to say, “The squirrels require mature stands of trees with sufficient canopy cover to provide secure nest sites and allow for traveling in trees.”

Page 30, Section 3.3.2.2: “Operational devices to allow surface lighting in the central portion of the Project area to be turned off at night are also being considered. If such designs are implemented, indirect impacts from reduced habitat connectivity between surrounding habitat types would occur due to the presence of the proposed Project and the potential for edge effects.” As stated, this concept is unclear; Ecology should clarify in the FEIS if 1) turning lights on creates edge effects, 2) turning lights off creates edge effects, and 3) the purpose for lights if they will be turned off at night.

Page 11, Attachment 2, Table 2-1: A footnote should be added to the table to clarify when species “were not observed during the botanical survey.” This does not mean that the botanists did not observe them; it means that they were not documented because this survey was not a protocol-level full floristic survey which would identify every species present. The 2019 botanical survey’s intent was to document presence of rare plants and to field-verify PHS habitat types. As an example, many common species such as yarrow are present in the study area, but the botanical survey did not mention them. A pre-construction botanical survey will take place to document all species present in the study area.

Attachment 3: This mule deer range map does not include the study area boundary, so it is difficult to obtain mule deer information in relation to the proposed Project. The Applicant requests that Ecology update the map in the FEIS to include the study area boundary.

Appendix H – Tribal Resources Analysis Report

Page 4, Section 2.1: Ecology states that “The study area is the geographic extent of potential direct and indirect impacts to Tribal resources, including both the Project footprint and the adjacent area that could be affected by construction and operation of the proposed Project. The geographic extent of Tribal resources that could be impacted could extend well beyond the proposed Project footprint.” The Ecology study area includes areas outside the Project boundary, whereas the Applicant’s cultural investigations completed for the Project have been restricted to the Project boundary. Ecology’s FEIS should acknowledge that the Applicant has performed due diligence under FERC, and that FERC has not directed the Applicant to consider a larger study area.

Page 9, Section 3.2.2: Ecology indicates that “...Yakama Nation included concerns about the potential disruption of a Programmatic Agreement related to the construction and operation of the wind farm that overlaps with the proposed project area (BPA 1997^[19]). That agreement requires that the wind farm proponent ‘make a good-faith effort to acquire an access easement...to allow members of the [Yakama Nation] to conduct traditional plant gathering activities and other traditional uses’ (BPA 1997:3).” While the Applicant acknowledges this

¹⁹ Cited previously as BPA 1997, but has not been located.

statement, the actual access agreement does not appear to be available from any source, including DAHP, and it therefore cannot be reviewed.

Appendix I – Environmental Health Resource Analysis Report

Page 26, Section 3.3.1.1.2: In discussing construction stormwater, Ecology states, “If Ecology defines an allowable discharge for the contaminants of concern associated with the WSI cleanup action prior to their issuance of a Section 401 water quality certification for the proposed project, Ecology may choose to address the handling of contaminated stormwater and material in the Section 401 water quality certification instead of a site-specific Administrative Order.” The Applicant expects to address construction stormwater via the 1200-C Permit.

Page 26, Section 3.3.1.1.2: Ecology details that, “The Surface and Groundwater Hydrology Resource Analysis Report (Appendix B of the DEIS) proposes preparation of a Construction Water Resource Monitoring and Response Plan as a mitigation measure. This Plan would be implemented during construction and would provide an integrated program to monitor water quantity (hydrology) and water quality for groundwater and surface water. It would also define metrics for determining the presence and degree of impact. The proposed Plan would likely be prepared independent of the proposed WSI removal action under the Model Toxics Control Act (MTCA), but it may overlap with MTCA monitoring requirements (e.g., share monitoring locations) to achieve a comprehensive and efficient program overall.” The Applicant does not anticipate that a separate Construction Water Resource Monitoring and Response Plan will be required as a mitigation measure for groundwater or surface water due to the expected minimal impacts on these systems according to groundwater modeling and understanding of surface water features. The Applicant will address water quality associated with Project construction through the Dewatering Plan and soil and groundwater cleanup actions under MTCA, and has submitted a draft Mitigation Plan to address potential impacts on wetlands or ephemeral streams adjacent to or within the Project area.

Page 26, Section 3.3.2.1.2: Ecology details that, “The Surface and Groundwater Hydrology Resource Analysis Report (Appendix B of the EIS) proposes preparation of an Operations Water Resource Monitoring and Response Plan as a mitigation measure. This Plan would include monitoring of water quantity (hydrology) and water quality during long-term operation of the proposed project. The proposed Plan would likely be prepared independent of the proposed WSI removal action under MTCA, but it may overlap with MTCA monitoring requirements and locations, similar to the construction plan, to achieve a comprehensive and efficient program overall.” The Applicant does not anticipate a separate Operations Water Resource Monitoring and Response Plan will be required as a mitigation measure for groundwater or surface water due to the expected minimal impacts on these systems according to groundwater modeling and understanding of surface water features. The Applicant will address water quality during operation through a Water Quality Monitoring Plan and soil and groundwater cleanup actions under MTCA, and has submitted a draft Mitigation Plan to address potential impacts on wetlands or ephemeral streams adjacent to or within the Project area.

Page 35, Section 3.3.4: Ecology proposes mitigation measures for water resources during construction and operations and notes that these measures are “not required to reduce any significant adverse impacts.” The Applicant will address these proposed mitigation measures

(i.e., Construction Water Resource Monitoring and Response Plan and Operations Water Resource Monitoring and Response Plan) by developing plans that will reduce potential impacts to environmental health, including the Construction Stormwater General Permit (i.e., 1200-C Permit; addresses construction water quality); the Dewatering Plan (addresses construction water quality); the Remedial Investigation, Feasibility Study, Cleanup Action Plan and PPCD (includes soil and groundwater cleanup actions under MTCA); and Mitigation Plan (addresses potential impacts on wetlands or ephemeral streams adjacent or within the Project area).

Attachment B – Proposed Cultural Resources Mitigation Measures**HPMP Section 4.6.3**

1. Interpreting historic properties, via interpretive panels, displays, walking tours, or other means, to enable the history and importance of the properties to be shared with the public or, if public sharing is inappropriate, internally within a Tribe;
2. Displaying artifacts in a museum or museum-like setting;
3. Providing support to tribal programs to give access to tribal members to select areas within TCPs and/or providing support to tribal cultural programs related to oral histories, education, vegetation enhancement, First Foods, etc.; or
4. Listing a historic property in the NRHP; note, however, that may only be appropriate for certain types of historic properties, and some Tribes do not support listing TCPs to the NRHP.

HPMP Section 4.6.4

5. Given that the TCPs, in part, draw significance from culturally significant vegetation, conduct surveys to identify areas where traditionally gathered resources are present and implement a protection and enhancement plan for said resources;
6. Allow Tribal members to access select areas within or near the APE,²⁰ for example, at root digging areas or areas containing other traditionally gathered resources;
7. Incorporate vegetation or other visual screening measures to minimize viewshed changes resulting from the Project;
8. Partially redesign the Project laydown areas, or incorporate protective measures (e.g., restrict ground disturbances through use of mats or other means), to minimize effects at 45KL567/570 and 45KL746;
9. Conduct archaeological data recovery at Site 45KL746, for which the Licensee has prepared a draft treatment plan detailing a proposed data recovery research design (see Punke et al. 2021); notably, however, the CTUIR consider data recovery to be an adverse effect and not mitigation for an adverse effect (Shawn Steinmetz, personal communication 2021), and the CTWSRO technical reviewer has stated concerns about the necessity of data recovery at the site and would prefer design modifications to avoid the site (Christian Nauer, personal communication 2021);
10. Recover and curate artifacts for display and interpretation at a Tribal museum, or provide other museum support or funding;
11. Conduct cultural resources monitoring during construction with a focus on using tribal monitors; simultaneously enact safety measures to ensure security of monitors and surrounding communities, particularly Indigenous communities, against potential increased violence during construction (policing of construction housing camps, enforcing a no drugs and alcohol policy, etc.);

²⁰ Area of potential effect

12. Provide funding for oral history programs or other tribal cultural programs; for example, support the CTUIR's Elder in Residence Program, in which the CTUIR CRPP works with an elder to document important places and record the information in their oral history database;
13. Provide funding, recordation of digital content, or other efforts to support other tribal cultural or education programs or initiatives;
14. Work with tribal programs to conduct First Foods inventories, which work with Elders and community members to document areas where tribal members can harvest First Foods; and
15. Purchase mitigation property(ies) for tribal ownership, for example properties containing First Foods or those appropriate for conducting cultural activities.